

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 December 2002

CASE NO.: 2002-ERA-0035

In the Matter of:

**YING CHEUNG,
Complainant,**

v.

**AMERSHAM HEALTH,
Respondent.**

Before: PAMELA LAKES WOOD
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This matter arises under the employee protection ("whistleblower") provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, 29 C.F.R. Part 24. The parties are Complainant Ying Ying ("Jenny") Cheung ("Complainant") and Respondent Amersham Health ("Respondent"). A hearing in this matter was commenced on September 6, 2002 in New York City and was to be continued on October 31, 2002. However, the continuation of the hearing did not take place upon advice that the parties had reached a tentative agreement.

Under cover letter from Respondent's counsel of November 27, 2002, filed on December 2, 2002, the parties submitted to the undersigned a "Confidential Settlement Agreement and Release" ("Settlement Agreement") with attachments (relating to withdrawal of employment-related complaints filed with other entities) and a letter from Complainant requesting the withdrawal of the appeal of the dismissal of her "Energy Recovery (sic) Act claim, with prejudice." While the parties have not specifically requested my approval of the agreement, the ERA requires that settlements in ERA cases be reviewed to determine whether they are fair, adequate and reasonable. *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989). *Compare Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in JTP case when parties have stipulated to dismissal under Rule 41(a)(1)(ii), FRCP, and contrasting ERA cases, which require approval of settlements).

To the extent that the Settlement Agreement relates to matters under laws other than the ERA, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that the Respondent violated the ERA. *See Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

I note that the Settlement Agreement itself incorporates certain confidentiality provisions binding upon the parties. Having reviewed those provisions, I find that the provisions do not run afoul of the requirements of law. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2d Cir. 1996); *Bragg v. Houston Lighting & Power Co.*, 1994-ERA-38 (Sec'y June 19, 1995). However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. As the Administrative Review Board (ARB) has noted: "If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). The parties have **not** specifically asserted pre-disclosure notification rights under 29 C.F.R. § 70.26.

Having reviewed the Settlement Agreement, I find that it is a fair, adequate, and reasonable settlement of the complaint in this matter. Accordingly,

ORDER

IT IS HEREBY RECOMMENDED that the Settlement Agreement be **APPROVED** and that the complaint of Complainant Ying Ying Cheung in case number 2002-ERA-0035 be **DISMISSED WITH PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8. A copy of the Settlement Agreement is being provided to the Deputy Associate Solicitor, Division of Fair Labor Standards, for the Occupational Safety and Health Administration's determination whether it will petition for ARB review. *See* 29 C.F.R. § 24.6(f)(1) (2000)